

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

MEMORANDUM

Plaintiff,

10-cv-47-bbc
08-cr-134-bbc

v.

MORRIS E. BROWN,

Defendant.

On February 18, 2010, I denied defendant Morris E. Brown's motion for post conviction relief under 28 U. S. C. § 2255 for his failure to show that either his conviction or sentence is illegal. Because I denied defendant's § 2255 motion, it is necessary to address the issuance of a certificate of appealability under the newly effective amendments to Rule 11 of the Rules Governing Section 2255 Cases in the United States District Courts.

A certificate of appealability shall issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). In order to make this showing, a defendant must "sho[w] that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that

the issues presented were 'adequate to deserve encouragement to proceed further.'" Slack v. McDaniel, 529 U.S. 473, 484 (2000) (quoting Barefoot v. Estelle, 463 U.S. 880, 893, n.4 (1983)).

Although Rule 11 allows the court to direct the parties to submit arguments on the question of issuing a certificate of appealability, it is unnecessary to do so in this instance. No reasonable jurist would believe that defendant's motion has any merit. Defendant's assertions that his attorney was ineffective and that the court erred are not ones that judges would consider debatable. No certificate of appealability will issue.

Entered this 4th day of March, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge